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Abstract

Jordanian garment producers are looking closely at the likely effects on their trade with the United States (US) once all quotas are removed on textile and garment imports from competing suppliers into the US from 1 January 2005. This note briefly discusses answers to a number of questions. What is currently known about the intention of the US to reduce tariffs and other trade barriers on garment imports? Will Jordan retain a level of trade preference with the US vis-à-vis competing garment exporting nations? How likely is the US to impose specific trade restrictions on surges of imports from major garment exporting nations after 2004?

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II. INTRODUCTION

Jordanian garment producers are looking closely at the likely effects on their trade with the United States (US) once all quotas are removed on textile and garment imports from competing suppliers into the US from 1 January 2005. This note briefly discusses answers to a number of questions. What is currently known about the intention of the US to reduce tariffs and other trade barriers on garment imports? Will Jordan retain a level of trade preference with the US vis-à-vis competing garment exporting nations? How likely is the US to impose specific trade restrictions on surges of imports from major garment exporting nations after 2004?

This note has been prepared from publicly available material. The AMIR Program does not have access to international legal databases and, therefore, cannot review US case law. This note does not purport to be a legal opinion on the frequency and likely outcome of product specific safeguard measures or other trade remedy actions being brought by WTO members against Chinese garment and textile exports after 2004. This note does not represent the views of USAID or other agencies of the US Government.

III. EXECUTIVE SUMMARY

1. The Trade Act of 2002 requires the United States Trade Representative (USTR) to negotiate tariff reductions on textiles and garments on a reciprocal basis. Multilateral negotiations on textile and garment tariff reductions as part of the World Trade Organization (WTO) Doha Round are facing resistance from developing country WTO Members. While some tariff reductions can be expected in the Doha Round, free trade in garments with the US is likely only through US free trade agreements (FTAs).

2. Jordan will very likely continue to enjoy advantageous rules of origin for garment exports to the US under its privileged FTA. The USTR is requiring strict rules of origin language in its new FTAs, e.g. the yarn forward essential character rule and limited short supply and strict tariff preference levels. Such provisions have been agreed with Singapore and Chile and are being negotiated in the FTAs with Morocco, Australia, and Central America. The US intends using the same language for the Free Trade Area of the Americas negotiations and the FTA with the South African Customs Union.

3. Leading garment exporting countries are concerned that the expected surge of garment imports into the US in 2005 will be exacerbated by the large share of garment trade still currently subject to quotas and the lack of quota carry forward. They fear that the sudden reduction in prices and increase in volume will prompt US domestic competitors to take action to impose new restrictions on garment imports. Import prices will, nevertheless, fall significantly once quotas are eliminated because quota costs contribute between 10-50 percent of the imported unit value.

4. The Agreement on Textiles and Clothing (ATC) is clear that the date to eliminate all quotas cannot be extended beyond 1 January 2005 and no new quotas may be imposed after this date.

5. It is difficult to assess if developed countries will significantly increase antidumping activity against large developing country textile and garment exporters when all quotas are removed after 2004. The ease and effectiveness of bringing antidumping actions will likely encourage their use. Even threatening to investigate will likely encourage exporting firms to negotiate price undertakings. Restraining factors include the opposition of the main US apparel industry association to increasing restrictions on apparel imports, and similar opposition from developing countries in the ongoing Doha Round negotiations to clarify antidumping regulation.

6. As a condition of accession to the WTO in 2001, China agreed that WTO Members could impose two types of safeguard action on imports of Chinese products. Both actions permit China to voluntarily limit the volume/raise the price of its exports or, if China refuses to limit its exports, importing countries can place duties or quotas on such imports.

    a. The first type of safeguard action is a temporary restriction specifically targeted at garments and textiles, and is applicable any time before 31 December 2008. At a minimum, China can be required to hold its shipments to the requesting Member to a

level no greater than 7.5 per cent above the amount entered during the first 12 months of the 14 months preceding the date of request. Unless both parties otherwise agree, such actions may remain in effect no longer than 12 months.

b. The second type of safeguard action is called the Transitional Product-Specific Safeguard Mechanism (TPSSM) which is available to Members to impose until late 2013. TPSSM applies to any Chinese product, not just textiles and garments, and its application is not limited to 12 months. However, China may retaliate by imposing its own restrictions on imports from any country applying the safeguard for more than two years.

c. It appears that in order to impose either of the special safeguard measures, domestic industry in the importing country must establish that imports of Chinese textiles or garments have caused market disruption leading to material injury to the domestic industry. Based on factors used to establish market disruption and material injury in other situations and the decisions of the Committee for the Implementation of Textile Agreements (CITA) in three special safeguard cases approved so far, significant increases in Chinese imports compared to imports from other countries and compared to domestic production is required with evidence of a significant price differential between Chinese imports and domestic like products.

IV. US MULTILATERAL AND BILATERAL TRADE NEGOTIATIONS

President Bush received fast-track trade negotiating authority from Congress in August 2002 – the Bipartisan Trade Promotion Authority Act of 2002, normally referred to as the Trade Act of 2002.[1] Fast-track approval permits the President to negotiate international trade agreements within a strict time frame subject only to the approval or rejection by Congress by a simple majority in each house. International treaties normally require a two-thirds majority in the Senate. Provided the President negotiates trade agreements within the negotiating objectives set out in the fast-track legislation then Congress will not seek to amend the provisions of the agreement. This encourages other governments to enter into trade negotiations with the US administration with the assurance that any agreement made will not be later altered by Congress. Congress sets and monitors the negotiations through relevant committees and the appointment of five Congressional representatives as advisors to the USTR.[2]

Section 2102 (b)(16) of the Trade Act 2002 provides that the principle US negotiating objectives with respect to textiles and apparel are to lower tariff and non-tariff barriers to trade in such products based strictly on reciprocity:

"TEXTILE NEGOTIATIONS.-The principal negotiating objectives of the United States with respect to trade in textiles and apparel articles are to obtain competitive opportunities for United States exports of textiles and apparel in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports in United States markets and to achieve fairer and more open conditions of trade in textiles and apparel."

A. DOHA DEVELOPMENT ROUND OF WTO NEGOTIATIONS

The USTR has provided WTO Members with the U.S. Non-Agricultural Market Access proposal for the Doha Round of multilateral trade negotiations.

> "The U.S. proposal is designed to ensure that countries with high textile and apparel tariffs reduce such tariffs quickly to levels comparable to those of the United States. Most textile and apparel tariffs for major trading countries, including the European Union, Brazil, India, and China, would be reduced to between 3.6 and 6.6 percent by 2010. The maximum tariff would not exceed 8 percent. Under the U.S. proposal, the higher tariffs would drop further and the lower tariff rates would fall less, creating a flatter range of worldwide textile and apparel tariffs, thus creating a more level playing field. If the U.S. proposal is not accepted on a reciprocal basis then the United States will work towards other negotiating outcomes that meet the Trade Promotion Authority mandate."[3]

Under the Most Favored Nation Principle of WTO multilateral negotiations, agreement between the US and these countries to reduce tariffs on textile and apparel products would be extended by the US

[1] Bipartisan Trade Promotion Authority Act of 2002, Div. B, Title XXI, Trade Act of 2002, Pub. L. No. 107-210, 116 Stat. 933 (2002)
[2] 19 U.S.C. § 2191 (2000) (setting out fast track procedures)
[3] Second Report to the Congressional Textile Caucus on the Administration's Efforts on Textile Issues, U.S. Department of Commerce, October 2003 p.2

to all other WTO Members at the conclusion of the Doha Round. However, the outcome of the Cancun Ministerial suggests that it may not be possible for Members to reach agreement on the set of Doha negotiations. If no multilateral agreement on lowered textile and garment tariffs is reached then countries will continue to negotiate reductions through bilateral/regional trade agreements.

On December 15, the Chairperson of the WTO General Council reviewed progress since Cancun on the Doha Development Round of non-agriculture negotiations. He stated that there is still no agreement on the tariff reduction formula, the selection of goods sectors to include in the negotiations, e.g. if market access for textiles and garments would be included in negotiations, and what sort of flexibility should be available for developing countries, e.g. the ability to impose higher tariffs or special safeguard measures. Negotiating bodies will restart their work when a new Council chairperson is elected.

In November 2002 the USTR raised the prospect of ultimate free trade in non-agricultural goods by announcing a comprehensive proposal to eliminate all industrial tariffs on a reciprocal basis by 2015. Whether tariffs on textile and garment products will eventually be eliminated depends on the reaction of trading partner countries and US domestic interests. As part of its accession to the WTO China agreed to almost halve its average level of tariffs on garments from about 20% to 11%. However, India still maintains relatively high tariffs on textile and garment imports. Domestic industry interests will be discussed in the final section of this note. The American Textile Manufacturers Institute opposes the elimination of tariffs on US textile and garment imports. However, the American Apparel and Footwear Association supports such elimination.

B. US Free Trade Agreements

The USTR is applying the Trade Act 2002 negotiating principles to agree on reciprocal tariff elimination on textiles and garments in its bilateral free trade agreement negotiations. However, the USTR is also requiring strict rules of origin and anti-circumvention language. These provisions have been agreed with Singapore and Chile and are being negotiated in the FTAs with Morocco, Australia, and Central America. The US intends using the same language for the Free Trade Area of the Americas (FTAA) negotiations and the FTA with the South African Customs Union.[4]

A recent report prepared for the American Apparel and Footwear Association discusses these restrictions in the Caribbean Basin Trade Partnership Act (CBTPA) program.[5] Prior to 2000, trade preferences were granted by the US to Central America only for apparel that was cut in the US. The CBPTA no longer requires fabric to be cut in the US, however, tariff-free entry is mainly available for apparel made using US fabric made from US yarn. Limited quantities of apparel made from regionally produced knit-fabric is permitted duty free if the fabric is made from US yarn. Subsequent growth of apparel exports has been outside of the restrictions of the CBPTA and the region as a whole as lost US market share.

The report recommends that the FTA being negotiated between the US and Central America adopt origin rules closer to the rules in the Jordan and Israel FTAs. In particular the report argues:

[4] Ibid page 3

[5] Assessment of the Long-Term Competitiveness of the Central American Textile and Apparel Industries and Need for Free Trade Agreement, The IBERC Group – Division of ST&R, December 2003

1. that the so-called "yarn forward essential character rule" proposed under the Central American FTA is restrictive as it still requires fabric to be made in the US or in the region and to be made from US or regional yarn.
2. Short supply provisions that permit foreign yarns and fabrics when US or regional inputs are not widely available in commercial quantities in a timely manner should be applicable in a flexible manner.
3. Tariff Preference Levels (TPLs) in NAFTA and the Singapore and Chile FTAs permit duty free entry of limited quantities of apparel that do not comply with the yarn forward essential character rule. These should be applied to commercially significant quantities under the Central American FTA in order to permit the regional industry to survive post 2004.

The ATMI has proposed its own short supply flexibility scheme for the Central America FTA. "…TPLs and other exceptions that help third party countries at the expense of US and participating regional textile producers cannot be supported".[6]

A comprehensive comparison of rules of origin for textile and apparel products in the Jordan-US FTA and competing US FTAs is beyond the scope of this note. Given the Department of Commerce statement above on rules of origin negotiating objectives, it appears that Jordan will continue to enjoy advantageous apparel rules of origin.

[6] Letter from ATMI to Undersecretary of Commerce, December 9, 2003, www.atmi.org

V. IMPLEMENTATION CONCERNS WITH AGREEMENT ON TEXTILES AND CLOTHING

International trade agreements have restrained imports of textiles and garments into OECD countries for over 40 years. The final and most comprehensive agreement was the MFA. During the Uruguay Round of WTO negotiations, Members initialed a new agreement, the ATC, to phase out all quotas on all garment and textile product categories over a ten year period. Therefore, by 1 January 2005 all WTO Members will be able to export and import garments and textile free of quotas. Trade in such products will be integrated into normal WTO/GATT rules, such as binding tariff limits, non-discrimination, trade remedies, prohibition on all quantitative measures, etc.

Two major concerns have arisen from the implementation of the ATC and the removal of quotas leading exporting countries to fear that a surge of garment imports into the US in 2005 will prompt US domestic competitors to take action.

Firstly, developing country exporters are concerned that importing countries are minimizing the number of quota-free products currently able to be traded by delaying the integration into GATT principles of products subject to binding quotas. With only one year to go before integration is completed most textile and garment quotas remain in place in the importing OECD countries – 851 out of 932 in the US, 222 out of 303 in the EU, and 292 out of 368 in Canada.[7] The high number of remaining quotas is partly because over one third of the products selected by these countries for integration under the ATC were not subject to quotas under the MFA and so could be integrated in the early stages of the ATC without increasing competition against domestic producers.[8]

The second major concern of garment and textile exporters is that the quota growth formula built into the ATC has been applied too restrictively. Effective quota growth rates are low and most exporting countries each year have had to request advances of quotas from their entitlements for the proceeding year. US bilateral agreements permit annual carry forward of quotas at a rate of 6% - 7%. However, since all quotas will be eliminated at the beginning of 2005, there is no quota that can be carried forward to 2004. Therefore, some quotas in 2004 may actually be smaller than in 2003 placing upward pressure on prices in 2004. This is clearly an opportunity for Jordanian producers to ship as much product as possible to the US in 2004.

However, exporting countries are concerned that any additional price increases in 2004 will be mean that prices will fall even further in 2005 after quotas are removed. They are concerned that significant price falls in 2005 will prompt the application of new import restrictions in importing countries. In July 2003, 13 developing countries requested the WTO General Council to recommend that developed Members take steps to ensure that there is no diminution of quota access for developing Members due to the lack of quota carry forward in 2004.[9] In its October 2003 report to the Congressional Textile Caucus, the Department of Commerce noted that "CITA (Committee for

[7] Anti-Dumping Actions in the Area of Textiles and Clothing – Proposal for a Specific Short-Term Dispensation in Favour of Developing Members Following Full Integration of the Sector into GATT 1994 from January 2005, WT/GC/W/502, 14 July 2003 page 3

[8] Dan Ikenson, Threadbare Excuses – The Textile Industry's Campaign to Preserve Import Restraints, October 2003, Center for Trade Policy Studies, Cato Institute

[9] Trade in Textiles and Clothing: Developing Members' Concerns about Potential Reduction in Market (Quota) Access in 2004, General Council 24-25 July 2003, WT/GC/W/503, 14 July 2003.

the Implementation of Textile Agreements) continues to get requests for additional quota access from countries which anticipate filling their quotas. CITA has taken a consistently strong position in opposition to such requests. We have maintained our commitment to existing schedules by rejecting all of the requests for additional quotas."[10]

Limits on quota growth will cause prices to increase on products that are already subject to high prices due to the underlying quota restrictions. Exporters bid for an allocation of the country quota from their governments. For example, the Chinese quota allocation per cotton quilt cost $8.50 in 2002, with the total cost to US consumers equal to $50.3 million for Chinese cotton quilts.[11] One US apparel manufacturer estimates that quotas add from 10 to 50 percent to the average garment price paid by a US importer.[12] Once quotas are removed after 2004 prices can be expected to fall by at least this amount.

[10] Second Report to the Congressional Textile Caucus on the Administration's Efforts on Textile Issues, U.S. Department of Commerce, October 2003 p. 4

[11] Peter McGrath, president of J.C.Penny Purchasing Corporation, Testimony before the US International Trade Commission, Investigation 332-448, January 22, 2003, quoted in Ikenson, supra footnote 2, page 5.

[12] Ted Sattler of Phillips Van Heusen Corporation, cited by Murray Hiebert, "Getting Ready for Free Trade", Far Eastern Economic Review, July 31, 2003

VI. TRADE REMEDIES AVAILABLE TO GARMENT IMPORTING COUNTRIES

After 2004, what can importing WTO Members do to restrict imports of garments and textiles? The ATC is clear that the date to eliminate all quotas cannot be extended beyond 1 January 2005 and no new quotas may be imposed after this date.

Outside of the ATC, the WTO Agreements, in general, do not permit Members to impose any quantitative restrictions on the export or import of non-agricultural goods. In cases where a surge of imports has caused serious damage to a domestic competing industry, or threatens a balance of payments crisis or imports are being dumped in the importing country market then quantitative restrictions may be imposed under strict conditions. This note discusses the two most likely permissible trade restrictions to be applied to garment or textile imports – antidumping and safeguard measures. Two other measures are countervailing duties and balance of payment measures. Countervailing duties require proof of an actionable subsidy in the exporting country, which tend to be beyond the fiscal reach of most developing countries. Nevertheless, the US is investigating possible provision by the Chinese government of subsidies to textile producers. Balance of payment restrictions are rarely applied in developed countries[13].

A. ANTIDUMPING

Antidumping actions are essentially private actions brought by domestic firms in an importing country against one or more producers of a like product in the exporting country. In general, antidumping actions involve the imposition of relatively high duties on the import of goods that have been sold in the importing country for less than the sales price of like goods in the exporting country (price discrimination) or less than the cost of production in the exporting country (below-cost sales). Once a sufficient price differential is established, the domestic competing industry must show it has suffered or is likely to suffer "material injury". Material injury is established by showing that some adverse financial performance of the competing domestic firm is linked in time or through declining domestic prices to dumping, and that other factors have not caused the decline in domestic prices. If injurious dumping is proven the importing country may impose a duty sufficient to remove the injury to the domestic industry for a period of up to five years (or longer if a review shows a continuing risk of injury).

B. SAFEGUARDS

Firms can also request their government to impose temporary emergency safeguard measures against sudden and unforeseen surges of imports of particular products causing "serious injury" to domestic industry in the importing country[14]. There must be a "genuine and substantial relationship of cause

[13] "The Commerce Department's Import Administration will work closely with the Office of Textiles and Apparel to gather information on and analyze textile subsidies which may be applied by China and other foreign countries. U.S. industry has expressed concerns related to possible subsidies in several major textile exporting countries. Research will focus on potentially countervailable subsidies that may be provided to textile manufacturers and exporters in these countries." Ibid, page 17.

[14] An import "surge" justifying safeguard action can be a real increase in imports (*an absolute increase*); or it can be an increase in the imports' share of a shrinking market, even if the import quantity has not increased (*relative increase*).

and effect" between the import surge and the injury. The injury must be a significant overall impairment in the position of the domestic industry. Safeguard measures include tariffs and quotas that seek to remove the injurious effect of the surge of imports of the product causing injury. They may normally be applied for up to four years, but up to eight years if injury continues and the local industry is adjusting. Any quotas imposed should not reduce import volumes to less than the average level of the previous three years.

C. COMPARISON OF ANTIDUMPING AND SAFEGUARD MEASURES

In summary, antidumping duties are imposed on specific imports from a specific country for up to five years in order to restore a "fairer" price level. Safeguard measures are imposed on a specific product imported from any country that risks serious injury to domestic industry. Important differences between the two measures include:

1. Safeguard actions apply to imports from all countries (although quotas may be applied disproportionately to particular countries), whereas antidumping duties can be imposed on specific exporters, e.g. Chinese underwear exporters;
2. Importing countries imposing safeguard measures have to provide compensation to the exporting countries by removing trade barriers on other imports, otherwise the exporting country may retaliate with its own import restrictions three years after the safeguard measure is imposed.
3. Safeguard actions apply a higher "serious" injury test than the "material" injury test used to establish dumping.

The greater ease and flexibility of bringing antidumping actions has encouraged their more frequent use among WTO Members. For instance, only 26 safeguard actions were brought between 1985 and 1994 compared to over 1,300 antidumping actions. Of the 1,132 antidumping measures imposed by WTO Members between the establishment of the WTO on 1 January 1995 until the end of 2002, eight percent involved textiles.[15] This is relatively high given that most textile trade over this period was controlled by quotas under the ATC. China was the most targeted country with 212 actions across all products in place over this period. The EU initiated 45 actions and the US initiated 26 actions over this period – when they also imposed quotas under the ATC.

It is useful to determine if the number of US antidumping actions involving textiles or garments has increased as quotas are removed under the ATC. Of the approximately 250 antidumping actions currently in place by the US only five relate to textiles or garments.[16] The majority of actions involved steel products. Cotton shop towels exported from Bangladesh and China have been subject to orders since 1992 and 1983. Polyester cotton print cloth from China has been subject to an order since 1983. Both orders predate the ATC. Until 23 December 2003, the only new initiation has been on imports of polyester staple fiber from the Republic of Korea. This product is already subject to an antidumping order on imports from the Republic of Korea and Chinese Taipei, in place since May 2000.

[15] WTO Training Course Presentation, 13-17 December, WTO, Amman, Jordan.

[16] Refers to the total sum of orders in place in every country – the number of affected products is less because each order usually affects one product imported from more than one named country. Calculated from data provided in the WTO Committee on Anti-Dumping Practices "Semi-Annual Report under Article 16.4 of the Agreement, United States", G/ADP/N/105/USA, 12 September 2003.

Antidumping actions can have significant effects on trade in both the exporting and importing countries. One major study examined 700 AD petitions filed in the United States between 1980 and 1994.[17] The author found that:

- 37% of AD cases resulted in AD duties being imposed, 25% of cases were settled through a voluntary price undertaking[18] and only 37% were dismissed.
- AD duties were relatively high – a median duty of 26%, compared to the pre-existing average MFN tariff of only 4%.
- Both actions reduced the value of targeted imports by a massive 50-60% in each of the first three years antidumping measures were in place. Volumes fell by about 60-70% in each case. (This has led user industries in the US relying on imported inputs, for example the information technology sector, to successfully lobby the government to reduce antidumping actions against such inputs.).
- Additional import sales from other countries made up about a third of the reduction in targeted imports. This could be good news for Jordanian garment exporters seeking to fill the gap left by US antidumping actions against major garment exporters.
- Even the threat of an AD action causes importers to seek alternative supplies and threatened exporters to raise their prices in the hope of deterring AD action. In the 37% of cases that were dismissed the value of imports fell by 15-20%.

D. Likely Use of Antidumping Measures after 2004

Developed countries are unlikely to impose emergency safeguard measures against surges in garment imports after quotas in lifted on 1 January 2005. Such surges are unlikely to be considered "unforeseen". They would have to be applied to all exporting countries and so small developing country exporters would be penalized along with China and India. Finally, affected exporting countries are able to retaliate.

It is difficult to assess if developed countries will significantly increase antidumping activity against large developing country textile and garment exporters when all quotas are removed after 2004. As discussed below the US is pursuing alternative remedies against China as permitted by China's accession negotiations to the WTO. However, the ease and effectiveness of bringing antidumping actions will likely encourage their use. Even threatening to investigate will likely encourage exporting firms to negotiate price undertakings. Restraining factors include the opposition of the main US apparel industry association to increasing restrictions on apparel imports, and similar opposition from developing countries in the ongoing Doha Round negotiations.

[17] Prusa, Thomas, On the Spread and Impact of Antidumping, Working Paper 7404, National Bureau of Economic Research, Cambridge, MA (1999)

[18] Under a voluntary price undertaking the exporter agrees to charge a higher price for its exports thereby reducing the quantity demanded. The exporter prefers such agreements to the imposition of an AD duty because the exporter captures the additional producer surplus due to the higher price which would otherwise accrue to the importing government as duty revenue. This is equivalent to a voluntary export restraint which are explicitly prohibited by Article 11.1(b) of the WTO Agreement on Safeguards.

E. DEVELOPING COUNTRY CONCERNS WITH ANTIDUMPING

A group of twenty developing country garment exporters submitted a paper to the WTO Negotiating Group on Rules as part of the Doha Round negotiations to clarify and improve the implementation of the WTO Antidumping Agreement[19]. The group submitted a similar paper to the General Council in July 2003.[20] The papers conclude that the investigation process itself needs improvement in order to avoid placing unnecessary pressure on imports from targeted countries. The group also note that the average value of exports of each of the 430 exporting firms producing bed linen and cotton fabrics was very small, ranging from half a million ECU to three million ECU per exporting firm. The group suggests that these small firms have insufficient strength to carry out a dumping strategy in export markets. They further criticized the length of time that preliminary and final antidumping orders remain in force, despite the regular reviews required under the Antidumping Agreement revised in the Uruguay Round. They seek new antidumping disciplines to prevent unnecessary initiations.[21]

Paragraph 4.2 of the Doha Ministerial Decision states that "Members will exercise particular consideration before initiating investigations in the context of anti-dumping remedies on textile and clothing exports from developing countries previously subject to quantitative restrictions under the ATC for a period of two years following full integration of the ATC into the WTO."[22]

The US has maintained a constant position on antidumping reform – to maintain the effectiveness of the current antidumping agreement. "Our negotiating strategy is to: 1) maintain the strength and effectiveness of the trade laws; 2) enhance transparency and due process requirements; 3) enhance disciplines on trade distorting practices that lead to unfair trade; and 4) ensure that dispute settlement panels and the Appellate Body do not impose obligations that are not clearly contained in the Agreements. … Several developing countries have raised textiles as a specific area of concern before the General Council, proposing that there be a two-year moratorium on trade remedy cases on textile products once quotas are eliminated. The United States opposes any moratorium on trade remedy cases and considers such a proposal to be outside the mandate of Doha negotiations."[23]

[19] Anti-Dumping Actions in the Area of Textiles and Clothing: Developing Members' Experiences and Concerns, TN/RL/W/48/Rev. 1 5 February 2003

[20] Anti-Dumping Actions in the Area of Textiles and Clothing – Proposal for a Specific Short-Term Dispensation in Favour of Developing Members Following Full Integration of the Sector into GATT 1994 from January 2005, WT/GC/W/502, 14 July 2003.

[21] As an example the paper described the effects of three EU investigations resulting in no action after two years of investigation – although the Agreement in force at the time required investigations to be completed within one year. The complaints were brought by the same industry association and covered 44% - 67% of the respective import market. The association initiated further investigations on two of the products, bed linen and cotton fabrics, covering an even greater market share immediately upon the termination of the previous investigations. Each product was subject to six months of provisional duties during the investigations. The EU did impose antidumping duties on one of the products, bed linen, which the Appellate Body of the WTO disputes settlement process considered was unjustified. [CHECK APPELATE BODY DECISION] Import volumes from targeted countries dropped from 59% to 38% for cotton fabrics and from 52% to 45% for bed linen in the period starting before any investigation commenced and concluding after any antidumping action was lifted.

[22] Ministerial Decision on Implementation-Related Issues and Concerns, WT/MIN (01)/17, paragraph 4.2.

[23] US Department of Commerce, ibid note 3, page 12.

VII. SPECIFIC SAFEGUARDS ON IMPORTS FROM CHINA

During negotiations for China's accession to the WTO, Member countries included a number of special conditions on accession. Member countries were concerned about potential surges of Chinese imports due to the competitive nature and capacity of the Chinese textile and garment industry. Therefore, as a condition of accession to the WTO in 2001, China agreed that WTO Members could impose two types of safeguard action on imports of Chinese products.

Both actions permit China to voluntarily limit the volume/raise the price of its exports or, if China refuses to limit its exports, importing countries can place duties or quotas on such imports. Exporting countries prefer voluntary export limits over global quantitative restrictions or tariffs imposed by the importing country because the additional unit profit accrues to the exporter rather than the importing country. That is, the gain in producer surplus is shifted from the US importer to the Chinese exporter. Such voluntary export restraints were common in the 1980s on Japanese automobile exports to the US. However, they are now generally prohibited by the Agreement on Safeguards except in antidumping actions.

The first type of safeguard action is a temporary restriction specifically targeted at garments and textiles, and is applicable any time before 31 December 2008. It is discussed in the Report of the Working Party and incorporated into the Protocol of Accession.[24]

"In the event that a WTO Member believed that imports of Chinese origin of textiles and apparel products covered by the ATC as of the date the WTO Agreement entered into force**,** were, due to *market disruption, threatening to impede the orderly development of trade in these products*, such Member could request consultations with China with *a view to easing or avoiding such market disruption*."[25]

At a minimum, China can be required to hold its shipments to the requesting Member to a level no greater than 7.5 per cent above the amount entered during the first 12 months of the 14 months preceding the date of request. Unless both parties otherwise agree, such actions may remain in effect no longer than 12 months. After one year, affected import-competing industries must petition their government to reapply limits on garment and textile imports from China.

Such safeguard actions may be imposed on any products that are covered by the Agreement on Textiles and Clothing (ATC), whether or not the product was subject to a quota under the ATC. It appears that China may not retaliate with its own import restrictions.

The second type of safeguard action Members may bring against China is called the Transitional Product-Specific Safeguard Mechanism (TPSSM) which is available to Members to request until 2013 (12 years after accession). The mechanism is more general than the textile and garment measure – it applies to any Chinese product, not just textiles and garments – and its application is not limited to 12 months or less. Like other safeguard actions, China may retaliate and all requests and measures are notifiable to the WTO Committee on Safeguards.

[24] see Section 1.2 of the Protocol

[25] Report of the Working Party on the Accession of China, WTO, 1 October 2001, WT/ACC/CHN/49, para. 242 (a). See appendix 1 of this paper

Section 16 of the Protocol on the Accession of China sets out the requirements of the TPSSM. "In cases where products of Chinese origin are being imported into the territory of any WTO Member in such increased quantities or under such conditions as *to cause or threaten to cause market disruption* to the domestic producers of like or directly competitive products, the WTO Member so affected may request consultations with China with a view to seeking a mutually satisfactory solution, including whether the affected WTO Member should pursue application of a measure under the Agreement on Safeguards. Any such request shall be notified immediately to the Committee on Safeguards."[26]

China can retaliate in response to the use of this safeguard mechanism. If a safeguard measure based on a relative increase in imports has been in effect for more than two years, China may impose trade restrictions having an equivalent effect on the WTO Member applying the measure. If a safeguard measure based on an absolute increase in imports has been in effect for more than three years, China may also impose restrictions on the WTO Member applying the measure.

The TPSSM goes much further than the specific textile safeguard measure by permitting third country Members to limit imports of a product from China if that product is subject to a TPSSM by a Member and the safeguard measure causes or threatens to cause significant trade diversion of that product to the third country Member. Therefore, China could see its exports subject to a network of safeguard measures around the world. However, such safeguards are likely to be in place less than two years if Members are to avoid retaliation by China. Potential retaliation by China is likely to be a major deterrent to long-term safeguard measures given the recent growth of China's imports – the volume of China's imports of goods and services is forecast to increase by 40% in 2003.

In response to the concerns of China over the application of these safeguard measures, Members agreed that all procedures and notices would be published, only objective factors would be considered, and would provide opportunity for all interested parties, including importers and exporters to submit their views and evidence on the appropriateness of the measure and its furtherance of the public purpose.[27]

A. MARKET DISRUPTION

The term *market disruption* is commonly used in US bilateral textile agreements – it was used in the 1997 agreement with China. It appears that the same test of *market disruption* is required by both new China safeguard mechanisms. The textile safeguard mechanism description in the Working Party Report provides no definition of *market disruption*, but requires that it threatens to impede the *orderly development* of trade in the products. Orderly development is a vague term. What is orderly trade - does it exclude all trade movements that are not smooth and modest increases in volume or value?[28]

[26]Protocol on the Accession of the People's Republic of China, WTO, 23 November 2001, WT/L/432, Section 16 (1).
[27] Report of the Working Party, supra note 25, para 246.

[28] No legal search was undertaken for this paper to define the term "orderly". However, it's use in the phrase Orderly Marketing Agreement refers to a limit on exports to address injury to a domestic industry. An Orderly Marketing Agreement also refers to contracts negotiated between two or more governments, in which the exporting nation undertakes to ensure that international trade in specified "sensitive" products will not disrupt, threaten, or impair competitive industries or workers in importing countries. Comprehensive Guide to International Trade Terms, US DOC Office of Administration, Sept 1995

However, Paragraph 4 of Section 16 of the Protocol of Accession does set out broad criteria to determine *market disruption* under the TSSPM. The wording is standard to many bilateral US textile agreements: "Market disruption shall exist whenever imports of an article, like or directly competitive with an article produced by the domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of *material injury*, or *threat of material injury* to the domestic industry. In determining if market disruption exists, the affected WTO Member shall consider objective factors, including the volume of imports, the effect of imports on prices for like or directly competitive articles, and the effect of such imports on the domestic industry producing like or directly competitive products."[29]

Given the standard use of the term *market disruption* in US trade agreements, and given that the description of the first safeguard measure – specific to textiles and garments – was provided for briefly in the subsidiary Working Party Report and was not included in the main Accession Protocol with the TPSSM provisions, it is reasonable to assume that the TSSPM definition of *market disruption* in the Protocol applies to both safeguard mechanisms.

On May 21, 2003, the US Federal Government interagency Committee for the Implementation of Textile Agreements (CITA) published in the *Federal Register* the procedures CITA will follow in considering requests from the public, or self-initiating, safeguard actions on textile and apparel imports from China. Of main interest is the evidence required to support a claim of *market disruption*. Annual data over each of the past five years and comparable quarterly data for the latest quarter is required for Chinese imports and total imports of the product under dispute by the US and US production data of like or directly competitive products.[30] The petitioner should calculate Chinese imports as a share of the sum of total US production and total imports. The petitioner should also show how Chinese imports have adversely affected US domestic production, such as the effect on US prices or other "pertinent" information. Information may be furnished to CITA by firms, trade associations and workers seeking a safeguard action. Although the notice does not refer to material injury it does seek information on the adverse effect of imports on domestic production.

What degree of import surge compared to domestic US production and what change in US prices will CITA consider as *market disruption*. The term was used in the MFA as a cause of action by Contracting Parties. "In 1960 the Contracting Parties recognized the situation of *market disruption* following *sharp increases in imports, over a brief period of time and in a narrow range of commodities which can have serious economic, political and social repercussions in the importing countries*. Market disruption could be from:

1. a sharp and substantial increase or potential increase of imports of particular products from particular sources;
2. these products are offered at prices which are substantially below those prevailing for similar goods of comparable quality in the market of the importing country;
3. there is a serious damage to domestic producers or threat thereof;

[29] Compare with Article 6 "Emergency Action on Imports" of the US-Vietnam Trade Relations Agreement, "Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry."

[30] 27788-9 Federal Register / Vol. 68, No. 98 / Wednesday, May 21, 2003 / Notices

4. the price differentials referred to in (2.) do not arise from government intervention in fixing or the formation of prices or from dumping practices."[31]

A newsletter from the US law firm of Sandler, Travis and Rosenberg[32], PA notes that the only official US public statement on *market disruption* is a 1983 press statement by the Principal Deputy Press Secretary of the White House. This statement sets forth criteria for addressing import increases which if met, establish a "presumption of market disruption or threat thereof" as follows:

1. Total growth in imports in that product or category is more than 30 percent in the most recent year, or the ratio of total imports to domestic production in that product or category is 20 percent or more; and
2. Imports from the individual supplier equal 1 percent or more of the total U.S. production of that product or category.

B. MATERIAL INJURY

Given reference to material injury in Section 16 of the Protocol of Accession and reference to adverse effects on domestic industry in CITA's safeguard procedures, it is useful to exam the term in more detail. The term material injury is used in both the WTO Antidumping, and Subsidies and Countervailing Measures Agreements, as well as US statutes.[33] In particular in antidumping and subsidy cases, 19 U.S.C. § 1677(7)(A)-(E) defines material injury due to imports of subsidized and less than fair value merchandise, as "harm which is not inconsequential, immaterial, or unimportant." Statutory tests require the International Trade Commission to examine 1) is the relative or absolute volume of imports significant; 2) are import prices significantly underselling like domestic products or otherwise depressing prices to a significant degree; 3) evaluate all relevant economic factors which have a bearing on the state of the industry to determine the impact of imports on domestic producers of like products within the US. The Commission has a reasonably wide discretion to apply these tests to the facts of each case.

US courts have provided some comment on these criteria. The Court in SCM Corp v. United States[34] noted the following requirements to determine material injury:

1) significant market penetration per se is insufficient, other pertinent economic and financial criteria, including the health of the domestic industry should be considered;
2) evidence of price suppression as a result of imports should be made on a realistic basis using appropriate time scales and indices;
3) evidence of lost sales by the domestic industry by reason of increased imports.

C. FIRST SPECIFIC SAFEGUARD CASES AGAINST CHINA

On 24 July 2003 US textile producers filed special safeguard action petitions through CITA on imports of Knit Fabric (Cat 222), Cotton and man-made fiber brassieres (cat 349/649) and Cotton

[31] Background Note on WTO ATC, Agency for International Trade Information and Cooperation June 1999, http://www.acici.org/aitic/documents/notes/note13_eng.html

[32] Overview of Commerce China Safeguard Provision, Client Advisory, May 20 2003, www.strtrade.com

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[34] 544 F. Supp. 194, 195-196, 198-201 (CIT 1982)

and man-made fiber dressing gowns (Cat 350/650).[35] The American Textile Manufacturers Institute (ATMI) argues that since quotas on these products were lifted on 1 January 2002 exports of knit fabrics from China to the US have increased by 28,000%, exports of brassieres have increased by 382% and exports of dressing gowns have increased by 905%.[36] ATMI cited evidence that 314,000 US textile and apparel workers have lost their jobs since January 2001 – 730,000 jobs remain[37].

The ATMI petitions are very brief documents. For knit fabric the petition states that prices of Chinese knit fabric declined by 52% in 2002 and "have put severe downward pricing pressure on US and foreign suppliers, eroding profitability and the ability of other suppliers to compete". China's share of total US imports of knit fabric reached 8% in May 2003, and US production declined by 8% in 2002.[38] However, the data also shows that US production had already declined by 53% since 1997 before the China entered the US market in 2002. Furthermore, Chinese exports only represented 20% of the total US import growth of knitted fabrics in 2002.

Similar arguments were used by the ATMI to demonstrate a surge in Chinese dressing gowns. Chinese prices fell by 43% in 2002. The Chinese share of total imports increased from 5% in 2001 under quota to 36% in May 2003 quota-free and US production declined by 19%. Here, the increase in Chinese dressing gowns represented 97% of total import growth in 2002.[39]

The import history of brassieres is similar to dressing gowns. Chinese prices declined by 54%; China's share of total imports increased from 9% in 2001 to 37% in May 2003 representing 96% of total import growth; and US production continued its decline by 7% in 2002.[40]

How do these increases compare with the 30% total import increase or imports representing 20% of total domestic production criteria of the 1983 White House statement. Comparing total imports in the first five months of 2002 and 2003, only dressing gowns increased by more than 30%, imports of knit fabric actually declined. However, total imports represented more than 20% of domestic production in each product category. The second criteria of imports China having to be at least 1% of domestic production was also fulfilled for each product. Therefore, CITA's affirmative decisions do match the White House statement criteria.

On 18 November 2003, CITA announced an affirmative determination that imports from China of knit fabric, bras and dressing gowns and robes are, due to *market disruption*, threatening to impede the orderly development of trade in these products. CITA will request consultations with China with a view to easing or avoiding such *market disruption*. Upon receipt of the request, quotas will be established at a level of 7.5% above the imports entered over the past twelve-month period ending two months before the consultation request was made. Consultations with China will be held within 30 days of receipt of the request for consultations and could be extended to 90 days of receipt of the

[35] Concern over import surges of gloves and textile luggage from China did not result in petitions for safeguard actions on these products.
[36] Press release of ATMI October 29 2003, Textile/Fibre Coalition and 165 Senators and Representatives Urge Action on China Safeguard, page 2, www.atmi.org on 12/14/03
[37] ibid. Pages 1 and 3.
[38] Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China, CITA, August 13, 2003, www.otexa.ita.doc.gov/fr2003/cat222sg.htm
[39] id. , www.otexa.ita.doc.gov/fr2003/cat350650sg.htm
[40] id. , www.otexa.ita.doc.gov/fr2003/cat349649sg.htm

request for consultations. The quota is effective beginning on the date of the request for consultations. In practice, it is the date when CITA's final decision is published in the Federal Register. If the consultation between the US and China yields no results, the safeguard will last for 12 months after the request for consultations.

An explanation of the reasoning for CITA's decision could not be found on the Department of Commerce web site. Therefore, it may be presumed that the large increase in Chinese imports and the large price differential were sufficient for CITA to find market disruption and material injury in the three product categories.

D. US DOMESTIC INTERESTS

The affirmative *market disruption* decision was supported by the ATMI but criticized by other groups, particularly the American Apparel and Footwear Association (AAMA). This apparent contradiction is partly explained by ATMI members having their production plants located in the US and AAMA members having production plants located overseas. While holding market disruption with respect to knit fabric, bathrobes and brassieres, CITA did not find that imports of Chinese of gloves and textile luggage caused market disruption. The ATMI petitioned CITA that imports of Chinese gloves had increased by 173% and unit value had decreased from $4.66 to $2.71 between the first half of 2001 and the first half of 2002. Imports of Chinese luggage had increased by 417 percent and unit value had decreased from $13.71 to $5.23 over the same period.[41]

No official explanation of why petitions for temporary safeguards on US imports of Chinese gloves and textile luggage were declined was found in the preparation of this note. The petitions are not posted on the Department of Commerce web page. In terms of the 1983 White House criteria, total imports did not increase by 30% in either of the declined product. However, no production data was provided in the ATMI news release so further information is required to determine fulfillment of the remaining White House criteria.

The US Travel Goods Association lobbied the Bush Administration to rule against imposing a safeguard on luggage imports from China.[42] The Association noted that domestic production represents a "very minor percentage or overall industry production." The industry has relocated production overseas, particularly to China in the expectation of the removal of existing quotas on travel goods on 1 January 2002. Industry sales decreased 40 – 60 percent following September 11, 2001 and Association members have been working hard to restore profitability. Moreover, the Association argues imports of travel goods should be measured by number of pieces and not weight as the ATMI did in its petition to CITA. On this basis the increase in imports from China was 125 percent compared to an increase in weight of 536 percent. Unit size increased after quotas were lifted because quotas were based on weight. The Association finally noted that the increase in imports from China was not at the expense of US domestic production, and imports also increased from Mexico, Canada and Vietnam.

[41] News Release, ATMI Calls for New Quotas on Surging Chinese Imports – Cites record 119% increase since January 1st in imports of Chinese Textile Products, September 5 2002, www.atmi.org
[42] Travel Goods Association letter to President Bush, April 16, 2003, www.travel-goods.org/bush_letter.html

CITA has to make its decision regarding safeguards in the presence of lobbying from both industry associations. In a press release on the day of CITA's announcement of its market disruption finding over imports of the three Chinese products, the ATMI stated that "If China continues to pursue a strategy of flooding the US and other markets with unfairly and illegally undervalued textile and apparel products, we will demand our government respond with further safeguard actions."[43]

US apparel manufacturers were critical of the safeguard decision. US apparel manufacturers have adjusted to declining US tariffs and quotas over the years by investing in new technology and investing in low-cost locations overseas. The President of the American Apparel and Footwear Association stated in a press statement:

> "Although the Bush Administration received hundreds of comments on the three petitions, no apparel interests and specifically no manufacturer of bras, dressing gowns, and robes filed comments supporting the reimposition of quotas on U.S. imports of these products. In addition, a number of apparel companies filed comments in opposition to these quotas noting that, instead of causing injury, imports from China had actually helped their profitability and competitive position." [44]

It is not the place of this note to review the political economy of the US textile and garment industry. In summary, the US Government has acted to impose special garment and textile safeguards on certain Chinese imports and has refused to impose safeguards on other products. It has made this decision in the face of strong lobbying both for and against the decision.

[43] News Release, ATMI Applauds U.S. Decision to Impose Limits on Chinese Textiles, November 18, 2003
[44] News Release, Apparel and Footwear Association, AAFA President Expresses Outrage at China Safeguard Decisions on Bras and Dressing Gowns, Nov 18 2003, http://www.apparelandfootwear.org/data/chinasafeguardpr031118.pdf